

October 16, 2018

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In the Matter of the  
Post-Sentence Review of

SHELDON MARTELL MOREN.

No. 51775-2-II

UNPUBLISHED OPINION

LEE, J. — The Department of Corrections (DOC) petitions this court under RCW 9.94A.585(7) to review the sentence imposed by the trial court in *State v. Sheldon Martell Moren*, Lewis County Superior Court Cause No. 17-1-00637-21. In its judgment and sentence, the trial court sentenced Moren to 12 months and 1 day of confinement and gave him credit for 109 days of presentencing jail time. But Moren spent 25 of those days in jail on DOC sanctions.

Under RCW 9.94A.505(6), the trial court shall give offenders credit for presentencing jail time but only “if that confinement was solely in regard to the offense for which the offender is being sentenced.” Thus, DOC asks that we remand Moren’s judgment and sentence to the trial court to reduce his credit for presentencing jail time to 84 days. Moren and the State concede that DOC’s calculation is correct but urge us to deny DOC’s petition because the 25 days of credit for time served was a negotiated element of the plea agreement and because the issue of credit for time served is a factual issue, as to which DOC cannot seek review under RCW 9.94A.585(7).

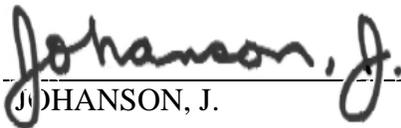
But there is no issue of fact here, only the application of RCW 9.94A.505(6). DOC's interpretation of RCW 9.94A.505(6) is correct. *In re Post-Sentence Review of Combs*, 176 Wn. App. 112, 119, 308 P.3d 763 (2013). And the parties cannot enter into an illegal plea agreement. *State v. Barber*, 170 Wn.2d 854, 872-73, 248 P.3d 494 (2011). While we grant DOC's petition, we cannot simply remand Moren's judgment and sentence to the trial court to remove the credit for presentencing jail time given for the 25 days Moren served on DOC sanctions. Because this was a negotiated plea agreement, the proper remedy is to remand to the trial court for further proceedings, including the possibility of Moren moving to withdraw his plea. *Barber*, 170 Wn.2d at 872-73.

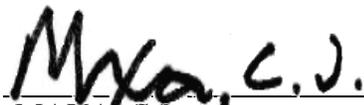
We grant DOC's petition and remand Moren's judgment and sentence for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
LEE, J.

We concur:

  
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JOHANSON, J.

  
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MAXA, C.J.